

PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Resolution ALJ 176-3109
Administrative Law Judge Division
March 13, 2003

R E S O L U T I O N

RESOLUTION ALJ 176-3109. Ratification of preliminary determinations of category for proceedings initiated by application. The preliminary determinations are pursuant to Article 2.5, Rules 4, and 6.1 of the Commission's Rules of Practice and Procedure. (See also Rule 63.2(c) regarding notice of assignment.)

The Commission's rules and procedures which implement the requirements of Senate Bill (SB) 960 (Leonard, ch. 96-0856) are, for the most part, found in Article 2.5 of our Rules of Practice and Procedure. The rules and procedures were adopted by the Commission in D.97-11-021, which describes more fully the background to the development of these rules. Rule 4 describes the formal proceedings to which the SB 960 rules (Article 2.5) apply. Rule 6.1 requires the Commission to preliminarily determine a proceeding's category, whether the proceeding requires a hearing, and designate an Assigned Commissioner and Administrative Law Judge. Rule 6.1(a) states that the preliminary determination of category is not appealable but shall be confirmed or changed by Assigned Commissioner's ruling. Unless and until a preliminary determination is changed by such ruling, the preliminary determination of category governs the applicability of the other reforms that SB 960 requires. Rule 63.2 provides for petitioning the Commission to reassign a proceeding to another administrative law judge. Rule 63.2(c) establishes the time for filing such a petition. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

The Categories

SB 960 makes sweeping changes in many aspects of the Commission's practices in an effort to improve the quality and timeliness of Commission decision making. It creates three categories of proceedings: adjudicatory, ratesetting, and quasi-legislative. The

applicability of many of the changes it requires depends upon the category assigned to the proceeding. For example, the ex parte rules which apply differ if the proceeding is categorized as adjudicatory rather than quasi-legislative. The Legislature defined each of these procedural categories in Section 7 of SB 960. Consistent with these definitions, the rules provide that:

“‘Adjudicatory’ proceedings are: (1) enforcement investigations into possible violations of any provision of statutory law or order or rule of the Commission; and (2) complaints against regulated entities, including those complaints that challenge the accuracy of a bill, but excluding those complaints that challenge the reasonableness of rates or charges, past, present, or future.

“‘Ratesetting’ proceedings are proceedings in which the Commission sets or investigates rates for a specifically named utility (or utilities), or establishes a mechanism that in turn sets the rates for a specifically named utility (or utilities). ‘Ratesetting’ proceedings include complaints that challenge the reasonableness of rates or charges, past, present, or future. For purposes of this Article, other proceedings may be categorized as ratesetting as described in Rule 6.1(c).

“‘Quasi-legislative’ proceedings are proceedings that establish policy or rules (including generic ratemaking policy or rules) affecting a class of regulated entities, including those proceedings in which the Commission investigates rates or practices for an entire regulated industry or class of entities within the industry.” (Rules 5(b), 5(c), and 5(d).)

Mixed or Unclear Category Proceedings

For a proceeding that may fall into more than one category, the rules allow parties to recommend that the Commission pick the most suitable category, or to recommend dividing the subject matter of the proceeding into different phases or one or more new proceedings, each with its own category. The rules provide that a proceeding that does not clearly fit into *any* of SB 960’s defined categories will be conducted under the rules applicable to the ratesetting category. As such a proceeding matures, the Commission may determine that the rules applicable to one of the other categories, or some hybrid of those rules, would be better suited to the proceeding.

As stated in D.97-06-071, ratesetting proceedings typically involve a mix of policymaking and factfinding relating to a particular public utility. Because proceedings that do not clearly fall within the adjudicatory or quasi-legislative categories likewise typically involve a mix of policymaking and factfinding, the ratesetting procedures are, in general, preferable for those proceedings.

Next Steps

As stated above, this preliminary determination of category is not appealable. Once interested parties have had an opportunity to respond to the initiating party's proposed category, the preliminary determination shall be confirmed or changed by Assigned Commissioner's Ruling pursuant to Rule 6(a)(3). This Assigned Commissioner Ruling may be appealed to the full Commission pursuant to Rule 6.4(a). Parties have 10 days after the ruling is mailed to appeal. Responses to the appeal are allowed under Rule 6.4(b), and must be filed and served not later than 15 days after the ruling is mailed. The full Commission will consider the appeal.

Any party, or person or entity declaring an intention to become a party is entitled to petition for reassignment of the proceeding to another Administrative Law Judge, as described in Rule 63.2. Such a petition must be filed no later than 10 days after notice of the assignment. For purposes of Rule 63.2(c), notice of the assignment is the day the assignments associated with this preliminary categorization document appear in the Daily Calendar following the Commission business meeting.

Conclusion

The Commission has reviewed the initial pleading of the utility applicants listed in the attached schedule and has made a preliminary determination of category and need for hearing, consistent with the requirements and definitions of Article 2.5 of its rules.

IT IS ORDERED that each proceeding listed in the attached schedule is preliminarily categorized, and the need for a hearing is noted.

I certify that the foregoing resolution was duly introduced, passed, and adopted at a conference of the Public Utilities Commission of the State of California held on _____, the following Commissioners voting favorably thereon:

WILLIAM AHERN
Executive Director

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3109 (3/13/03)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A03-02-031 NORTH COUNTY TRANSIT DISTRICT, to construct one grade-separated Light Rail Transit (LRT) bridge structure crossing over the existing at-grade crossings of Rancheros Drive, proposed Crossing No. 106E-116.81-B, SR-78, proposed Crossing No. 106E-116.83-B and Carmel Street, proposed Crossing No. 106E-116.86-B in the City of San Marcos, County of San Diego, California.	Ratesetting	Ratesetting	NO
A03-02-032 ESSI, ISSA, dba BEST SHUTTLE, GHADDAR, KAWKAB, dba BEST SHUTTLE, MANSOUR INTERNATIONAL, LLC, to transfer control of their Passenger Stage Authority, PSC-5911, to Mansour International, LLC, under Section 851 et seq., of the CA Pub. Util. Code, and to expand the service area to include points in the immediate vicinity under Commission jurisdiction, as more fully described in the Application, in accordance with Section 1036 et seq., of the Pub. Util. Code; and to establish a Zone of Rate Freedom under the provisions of Section 454.2.	Ratesetting	Ratesetting	NO
A03-02-036 BUZZ TELECOM CORPORATION, for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
A03-02-037 SOUTHERN CALIFORNIA EDISON COMPANY, (U 338-E) for Authority to Lease available land on the El Nido-Sepulveda-Culver Transmission Right of Way to Costco Wholesale Corporation.	Ratesetting	Ratesetting	NO
A03-03-001 CITY OF OCEANSIDE, for authority to construct a railroad undercrossing for pedestrian and bicycle purposes under the existing railroad bridge on the southerly side of the San Luis Rey River.	Ratesetting	Ratesetting	NO
A03-03-002 CM TEL (USA) LLC, for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
A03-03-003 DSCI CORPORATION, for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO

PRELIMINARY DETERMINATION SCHEDULE

Resolution ALJ 176-3109 (3/13/03)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A03-03-004 MYZIA COMMUNICATIONS, LLC, for Registration as an Interexchange Carrier Telephone Corporation pursuant to the provisions of Public Utilities Code Section 1013.	NDIEC Registration Application	Ratesetting	NO
A03-03-005 SONOMA AIRPORTER, INC., (PSC-1146) for authority to establish a Zone of Rate Freedom and individual fares for Passenger Stage Service between points in its authorized service area and the San Francisco International Airport.	Ratesetting	Ratesetting	NO
A03-03-006 NEW ACCESS COMMUNICATIONS LLC, (U 6545-C), for an amended Certificate of Public Convenience and Necessity to Expand its authority to provide Limited Facilities-Based Competitive Local Exchange services in the State of California.	Ratesetting	Ratesetting	NO
A03-03-007 BAYPORTER EXPRESS, to add Routes to its currently authorized on-call service areas to include on-call service between the City and County of San Francisco, on the one hand, and the San Francisco International Airport, on the other hand.	Ratesetting	Ratesetting	NO
A03-03-008 CITY AND COUNTY OF SAN FRANCISCO MUNICIPAL TRANS. AGENCY, for an order authorizing construction of at-grade crossings for 18 intersections along Segment C of the Third Street Light Rail Project in the City and County of San Francisco.	Ratesetting	Ratesetting	NO
A03-03-009 PACIFIC GAS AND ELECTRIC COMPANY, for an order finding that PG&E may grant a license for installation, maintenance and use of community boat dock pursuant to GO 69-C or, in the alternative, for authorization under Public Utilities Code Section 851 to grant a license to the Marina View Heights Association for installation, maintenance and use of a community boat dock.	Ratesetting	Ratesetting	NO

**PRELIMINARY DETERMINATION
SCHEDULE**

Resolution ALJ 176-3109 (3/13/03)

NUMBER TITLE	PROPOSED CATEGORY	PRELIM. CATEGORY	HEARING
A03-03-011 CENTRAL COAST SHUTTLE SERVICES, INC., to Amend its Passenger Stage Corporation License, PSC- 13086, to allow for a more flexible scheduling service that includes but is not limited to coordinating its schedule with that of the Santa Barbara Air Bus.	Ratesetting	Ratesetting	NO